

Regular Session, 2010

SENATE BILL NO. 432

BY SENATOR MARIONNEAUX

TAX/TAXATION. Constitutional amendment to repeal severance taxes upon oil and gas and to allow the levy of a tax upon hydrocarbon processing and to require a dedication of the first use of such taxes to replace constitutional dedications of severance tax and to require the distribution of the remainder for state highways or bridges, the Coastal Protection and Restoration Fund, and to or for the use of schools, colleges and universities, and other post secondary education institutions. (2/3-CA13sl(A))

A JOINT RESOLUTION

Proposing to Article VII, Section 4(B) and to repeal Article IX, Section 9 of the Constitution of Louisiana, relative to taxes related to natural resources and the use of such taxes; to repeal certain severance taxes; to allow certain natural resources to be subject to the levy of a tax upon hydrocarbon processing in the state imposed under the legislature's general authority to tax under the Constitution of Louisiana; to require certain dedications if such tax is levied; to provide for distribution of the revenues from such tax; and to specify an election for submission of the proposition to electors and provide a ballot proposition.

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members elected to each house concurring, that there shall be submitted to the electors of the state, for their approval or rejection in the manner provided by law, a proposal to amend Article VII, Section 4(B) and to repeal Article IX, Section 9 of the Constitution of Louisiana, to read as follows:

§4. Income Tax; Severance Tax; Political Subdivisions

* * *

(B)(1) Severance Tax. Except as provided for in Subparagraph (2) of this

Section, taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Natural resources may be classified for the purpose of taxation. Such taxes may be predicated upon either the quantity or value of the products at the time and place of severance.

(2) Effective July 1, 2011, the following taxes shall be repealed and no further taxes shall be levied on the severance of such natural resources:

(a) The severance tax on oil.

(b) The severance tax on distillate, condensate, or similar natural resources mixed with oil or gas.

(c) On natural gas and based on equivalent gas volumes, natural gasolines, casinghead gasoline, and other natural gas liquids, including but not limited to ethane, methane, butane, or propane.

(3)(a) Except for a hydrocarbon processing tax, no further or additional tax or license shall be levied or imposed upon oil, gas, or sulphur leases or rights. No additional value shall be added to the assessment of land by reason of the presence of oil, gas, or sulphur therein or their production therefrom. However, sulphur in place shall be assessed for ad valorem taxation to the person, firm, or corporation having the right to mine or produce the same in the parish where located, at no more than twice the total assessed value of the physical property subject to taxation, excluding the assessed value of sulphur above ground, as is used in sulphur operations in such parish. Likewise, the severance tax shall be the only tax on timber; however, standing timber shall be liable equally with the land on which it stands for ad valorem taxes levied on the land.

(b)(i) "Hydrocarbon processing tax" means a tax upon the use of hydrocarbon processing in Louisiana levied by the legislature under its general authority to tax provided by Sections 1 and 2 of this Article to be paid by the owner or proportionately by the owners of the hydrocarbons at the time any plant, building, construction, structure, or equipment located in Louisiana is

1 first used to process them.

2 (ii) If the legislature levies such tax, the revenues derived from the tax
3 shall be distributed as follows:

4 (aa)(I) First, to be distributed to any governing authority of a parish or
5 to any fund entitled to a distribution of the severance tax on oil and gas
6 pursuant to Sections 4(B)(2), 10.2, and 10.3 of this Article so that such authority
7 or fund shall receive the same amount to which the authority or fund would
8 have been entitled before the severance tax was reduced or repealed pursuant
9 to the provisions of Sections 4(B)(2) of this Article, unless such authority or fund
10 has been reimbursed by an appropriation made specifically for such purpose.

11 (II) The legislature shall further provide that if the distribution to a
12 governing authority of a parish required by Section 4(B)(2) of this Article
13 cannot be made because the tax has been placed in an escrow account pending
14 the outcome of litigation concerning the tax levied by this Section, the first
15 distribution to such authority shall bear interest at the rate actually earned by
16 the fund during the litigation.

17 (bb) Second, the remainder of the revenue shall be first used to comply
18 with the requirements of Article VII, Section 9(B) of the Constitution of
19 Louisiana relative to the Bond Security and Redemption Fund, and then shall
20 be distributed as follows:

21 (I) One third shall be appropriated to the Department of Transportation
22 and Development solely for the costs of projects for the construction,
23 reconstruction, or repair of state highways, roads, or bridges which are
24 included in the priority list of projects pursuant to the final highway
25 construction priority program as provided by R.S. 48:231, any mega project
26 from Priority List A through D of the department's Louisiana Statewide
27 Transportation Plan, and for maintenance of state highways, roads, or bridges.

28 (II) One third shall be deposited in the Coastal Protection and
29 Restoration Fund provided for in Section 10.2 of this Article and shall be used

1 **as provided for in that Section.**

2 **(III) One third shall be appropriated by the legislature solely to or for**
3 **the use of primary and secondary schools, colleges and universities, and other**
4 **post secondary education institutions.**

5 **(iii) Notwithstanding Article III, Section 16(B), a bill to levy such tax may**
6 **originate in the Senate.**

7 Section 2. Be it further resolved that Article IX, Section 9 of this constitution is
8 hereby repealed.

9 Section 3. Be it further resolved that this proposed amendment shall be submitted
10 to the electors of the state of Louisiana at the statewide election to be held on November 2,
11 2010.

12 Section 4. Be it further resolved that on the official ballot to be used at said election
13 there shall be printed a proposition, upon which the electors of the state shall be permitted
14 to vote FOR or AGAINST, to amend the Constitution of Louisiana, which proposition shall
15 read as follows:

16 To repeal the severance tax on oil and gas and allow a tax upon hydrocarbon
17 processing in Louisiana; to require revenues to be derived from the tax to be
18 distributed as follows: first, to any governing authority of a parish and to the
19 Atchafalaya Basin Conservation Fund, the Coastal Protection and
20 Restoration Fund, and the Budget Stabilization Fund which are currently
21 entitled by the Constitution of Louisiana to a distribution of the severance tax
22 on oil and gas and so that such authority or fund shall receive the same
23 amount to which the authority or fund would have been entitled before the
24 severance tax was reduced or repealed pursuant to this constitutional
25 amendment; second, to be distributed one third for the costs of projects for
26 the construction, reconstruction, or repair of state highways, roads, or bridges
27 which are included in the priority list of projects pursuant to the final
28 highway construction priority program as provided by R.S. 48:231, any mega
29 project from Priority List A through D of the department's Louisiana

1 Statewide Transportation Plan, and for maintenance of state highways, roads,
2 or bridges; one third to the Coastal Protection and Restoration Fund to be
3 used as provided for in fund law; and one third solely to or for the use of
4 primary and secondary schools, colleges and universities, and other post
5 secondary education institutions.
6 (Amends Article VII, Section 4(B) and repeals Article IX, Section 9)

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

Present constitution prohibits the levy of a tax other than severance tax on "oil, gas, or sulphur leases or rights."

Proposed constitutional amendment provides for a repeal of all severance taxes which are levied on oil and gas and their derivatives effective July 1, 2011 and allows a "hydrocarbon processing tax" on oil and gas. Defines "hydrocarbon processing tax" as a tax upon the use of hydrocarbon processing in Louisiana levied by the legislature under the general authority to tax provided to it Art. VII, Secs. 1 and 2 to be paid by the owner or proportionately by the owners of the hydrocarbons at the time any plant, building, construction, structure, or equipment located in Louisiana is first used to process them.

Present constitution, Art. VII, Sec. 4(D) requires one-fifth of the severance tax on oil and gas to be remitted to the governing authority of the parish in which severance or production occurs and, in certain circumstances, to the Atchafalaya Basin Conservation Fund, up to a certain maximum. Certain amounts of severance taxes are also required to be deposited to the Coastal Protection and Restoration Fund and to the Budget Stabilization Fund.

Proposed constitutional amendment provides that if the legislature levies such tax, it must dedicate revenues derived from the tax to be used as follows:

First, to be distributed to any governing authority of a parish or to any fund entitled to a distribution of the severance tax on oil and gas pursuant to Art. VII, Secs. 4(B)(2) [Atchafalaya Basin Conservation Fund], 10.2 [the Coastal Protection and Restoration Fund], and 10.3 [Budget Stabilization Fund] so that such authority or fund receives the same amount to which the authority or fund would have been entitled before the severance tax was repealed by the proposed constitutional amendment, unless such authority or fund has been reimbursed by an appropriation made specifically for such purpose. Further, the legislature must provide that if the distribution to a governing authority of a parish required by Section 4(B)(2) cannot be made because the tax has been placed in an escrow account pending the outcome of litigation concerning the tax levied by this Section, the first distribution to such authority shall bear interest at the rate actually earned by the fund during the litigation.

Second, the remainder of the revenue must be first used to comply with the requirements of the Bond Security and Redemption Fund, and then must be distributed as follows:

One third shall to be appropriated to the Department of Transportation and Development solely for the costs of projects for the construction, reconstruction, or repair of state highways, roads, or bridges which are included in the priority list of projects pursuant to the final highway construction priority program as provided by R.S. 48:231, any mega project from Priority List A through D of the department's Louisiana Statewide Transportation Plan,

and for maintenance of state highways, roads, or bridges.

One third to be deposited in the Coastal Protection and Restoration Fund to be used as provided for in that fund's law.

One third to be appropriated by the legislature solely to or for the use of primary and secondary schools, colleges and universities, and other post secondary education institutions.

Proposed constitutional amendment repeals the First Use Tax Trust Fund.

Specifies submission of the amendment to the voters at the statewide election to be held on November 2, 2010.

(Amends Const. Art. VII, Sec. 4(B) and repeals Const. Art. IX, Sec. 9)